

Legislative talking points

By Ann Bennett

We have heard from many members regarding the rising costs of WCIA's assessment over the last couple of years. The cost of claims due to nuclear verdicts, inflation and expanded liabilities imposed by legislative actions and judicial interpretation of law are primary drivers. Additionally, the reinsurance partners WCIA utilizes are raising rates significantly or refusing to write coverage at all due to the generous litigation environment that has been created. This is not unique to WCIA and is being experienced by all risk pools in Washington State who share WCIA's concerns for the future.

Last year WCIA established a Legislative Committee to begin working to address the impacts and begin looking for solutions with the Legislature. The Committee Members believe strongly that all members having discussions individually with their own Legislators will be most effective. To that end, WCIA has developed talking points with areas for members to insert their own experiences to guide your discussions (see next page). As always, I would be happy to speak to your lobbyists, answer any questions you may have and to work with your legislators to address this looming crisis.

Legislative Talking points for WCIA Members

Who is WCIA

Over 80% of all public entities use self-insurance risk pools for coverage of their liability risks. Risk pools in Washington State are all public entities themselves who use pooled public funds to provide coverage to their members. Risk pools are non-profits who work with their members to share and prevent risks that occur in communities. Washington Cities Insurance Authority (WCIA) is a risk pool made up of municipal entities across Washington State with over 165 members and exemplifies inter-governmental cooperation to contain costs for taxpayers.

The Current state of liability and the impacts to communities

The civil litigation environment is bad and getting worse for public entities in the State of Washington. Multimillion-dollar verdicts, also known as nuclear verdicts, were not common against public entities and were often awarded against large for profit private corporations. Over the last several years public entities have now been hit with nuclear verdicts. By way of example: The Washington State Supreme court decided that a verdict against the State for \$98.5 million was appropriate for the wrongful death of two children; A Spokane Jury Awarded over \$19 million to a deputy for a Defamation claim against the elected Sheriff; A Snohomish County jury awarded \$5.5 million against a transit agency for a minor vehicle accident involving two cars. All of these verdicts are funded utilizing taxpayer dollars. Additionally, the erosion of defenses and immunities once afforded to public entities have meant claims once dismissed are now costing millions of dollars. A court decision that further eroded the recreational immunity statute resulted in a county paying \$10 million on a claim that a few short years ago would have been dismissed outright.

Risk pools are shouldering millions of dollars of exposure that are being passed down to their members in terms of additional assessments. The additional costs mean that our community is diverting money from (Member should insert what they would divert from) to fund WCIA's assessment. Our pool relies on partnering with traditional insurance to provide further coverage above their self-funded \$4 million per loss. Those traditional insurance carriers are either refusing to write any coverage or doing so at significant costs. The future outlook is that our communities will have less coverage and will need to redirect money to cover losses rather than providing valuable services, programs and much needed maintenance (Member should insert what would happen to their community if they had to fund a multimillion dollar verdict). Even now cities are consulting bankruptcy attorneys on tort claims due to the potential for verdicts over current coverage.

Solutions

Cities need Legislators to oppose any efforts to expand tort law liability and/or the remedies available under tort law. If expansions are approved by the legislature, then the State should



consider creating a fund to cover those costs. Cities and their risk pools cannot be expected to shoulder the staggering costs imposed by legislative changes. At a minimum that State should provide a reinsurance fund that risk pools and individual entities could utilize.

Tort reform for all public entities needs to be addressed and the balance restored between protecting harmed individuals with reasonable verdicts and appropriate defenses. Tort reform could include: caps on the amount of damages that can be collected against public entities (which is law in 33 States); reinstating immunities that have been eroded by the courts and amending the law on joint and several liability which incentivizes claims against public entities as deep pockets. WCIA would be happy to work with legislators to address this looming crisis and find solutions for cities to remain solvent and provide the services their communities need and desire.